IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :: 19-09-2007

CORAM

THE HONOURABLE MR.JUSTICE S.PALANIVELU

CRIMINAL ORIGINAL PETITION No.20275 OF 2007

V.Baskaran ... Petitioner

-vs-

1.The Chief Enforcement Officer,
Enforcement Directorate,
No.26, Haddows Road,
Shastri Bhawan,
Chennai-600 006.

2.The Assistant Director,
Enforcement Directorate,
Shastri Bhawan,
III Floor, III Block,
No.26, Haddows Road,
Chennai - 600 006. ... Respondents

Petition under Section 482 of the Code of Criminal Procedure.

For petitioner : Mr.T.Murugesan,
Senior Counsel,
for Mr.R.Syed Mustafa.

For respondents : Mr.R.Dhanapal Raj,
Special Public Prosecutor.

O R D E R

This petition has been filed, praying for a direction to the respondents to return the petitioner's passport bearing No.M-155984 so as to enable the petitioner to travel abroad.

2. The facts are thus :

2.1. Respondents conducted a search in various places during 1995-1996 on assumption of irregularities, inclusive of the premises of

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the petitioner, and seized certain records along with the passport of the petitioner, bearing No.M-155984, dated 25.08.1992. Six complaints came to be registered by the respondents against the petitioner before the Economic Offences/Additional Chief Metropolitan Court, Egmore, Chennai, in E.O.C.C.Nos.163 of 1996, 17 of 1997, 44 of 1998, 45 of 1998, 411 of 2002 and 459 of 2002 and the said cases are pending.

2.2. According to the petitioner, since his passport was also seized along with records, he could not undertake travel to foreign countries for his business purpose; the respondents have been retaining the passport, under the guise of investigation and, hence, he has come forward with this petition, for the relief stated supra.

3. Mr.T.Murugesan, learned Senior Counsel for the petitioner, would vehemently argue that it is uncharitable on the part of the respondents to keep back the passport of the petitioner, violating the procedure contemplated in The Foreign Exchange Regulation Act,1973, which was applicable to the relevant period. He draws attention of this Court to Section 41 of the Act, which reads thus :

> "41. Custody of documents, etc.- Where in pursuance of an order made under sub-section (2) of Sec.33 or the provisions of Sec.34 or Sec.36 or Sec.37 or of a requisition or summons under Sec.39 or Sec.40, any document is furnished or seized and any officer of Enforcement has reason to believe that the said document would be evidence of the contravention of any of the provisions of this Act or of any rule, direction or order made thereunder, and that it would be necessary to retain the document in his custody, he may so retain the said document for a period not exceeding six months or if, before the expiry of the said period of six months any proceedings -
>
> (i)under Sec.51 have been commenced, until the disposal of those proceedings, including the proceedings, if any, before the Appellate Board and the High Court, or
>
> (ii)under Sec.56 have been commenced before a Court, until the document has been filed in the Court :
>
> Provided that the aforesaid period of six months may, for reasons to be recorded in writing, be extended by the Director of Enforcement for a further period not exceeding six months."

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4. It shall be stated, that, previously, the period for retention of document was one year and, by means of Foreign Exchange Regulation (Amendment) Act,1993, the said period has been amended as six months.

5. The further argument of the learned Senior Counsel for the petitioner is that within six months from the date of seizure, the respondents failed to initiate the proceedings and, therefore, the passport has necessarily to be returned to the petitioner. In support of his contention, the learned counsel cites a decision of the Hon'ble Supreme Court in Marie Andre Leclerc v. State (Delhi Admn.), AIR 1983 SUPREME COURT 1092 = 1983 Cri.L.J.1445, wherein, a direction for return of passport was issued, on humanitarian ground. The operative portion of the said ruling goes thus :

> "2.....But, at the same time, we have to protect the interests of justice because the petitioner is suffering a sentence of life imprisonment for the offence of murder in one case and there are two other cases pending against her - one in the State of U.P. and the other in the State of Karnataka. We would, therefore, direct that the petitioner be allowed to go to Canada on condition that she files an undertaking in the form of an affidavit to this Court to return to India within one year from the date of her departure from this country....."

6. Relying upon the observations made in the above decision, the learned Senior Counsel submits that even the request of a murder case convict, who was suffering life imprisonment, was considered by the Supreme Court and, in the present case, the offences are not so grave as that of murder.

7. When there is a specific provision for return of passport or other records by the authority in a special statute, it must be scrupulously followed by the authority. This proposition of law has been illuminatingly highlighted in the judgment in K.M.Amir Abdul Kader v. Dy. Director, Enforcement Directorate, AIR 1986 MADRAS 140, relied upon by the learned Senior Counsel. In the said decision, a learned single Judge of this Court followed the decision of the Apex Court and concluded as such. The relevant portion of the said judgment has been culled out as follows :

> "5. It is seen from para 4 of the counter affidavit that the retention is sought to be justified on the basis of a judgment of a Division Bench of this

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Court dt.21-9-1976 in the Enforcement Officer, Madras-6 v. S.O.Arjunan Chettiar, W.A.237 of 1976 i.e., (1977) 1 Mad LJ 497 : (AIR 1977 Mad 279). Though that decision proceeded on the footing that if steps had been taken for initiating proceedings under the Act, whether within or beyond one year, it would be open to the officers of the Enforcement Directorate to retain the document seized, the Supreme Court in S.O.Arjuna Chettiar v. Enforcement Officer (1977) 2 Mad LJ 5 (SC) disapproving such a view stated as under at p.6 :-

> ".....we must express our disapproval of the action of the department in retaining the document beyond the period of one year specified in S.41 of the Foreign Exchange Regulation Act 1973. When the statutory provision requires that the document seized from a person should not be retained for a period exceeding one year unless before the expiration of the said period, adjudication proceedings are commenced under S.51, the department must obey the law and return the document unless in the meantime it has commenced adjudication proceedings under S.51. If it is found by the department that the period of one year, which is specified in S.41, is not adequate, it would be for the Legislature to amend the section in order to provide for extension of time, but so long as the section stands as it is, it must be complied with by the department."

8. From the above said decision, as held by the Apex Court, when a special statute stipulates a specific provision as to the procedure to be followed by an authority, the said authority is bound to follow it and any deviation or violation of it would not be tolerated. This is a special statute and specific provisions have been incorporated, regularising the procedure to be followed by the authorities, and, hence, the Supreme Court has not recognised the deviation from the procedure.

9. As far as the present case is concerned, on a tip-off, the office premises of M/s.Super Duper TV Pvt.Ltd., situated at 25, I Floor, Wellington Plaza, No.90, Mount Road, Chennai, was searched on 12.07.1995 and certain documents were seized by the respondent officials.

10. In order to ascertain the right of the respondents to proceed with the petitioner as regards his passport, the dates and events

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in this matter are relevant, which are furnished by the learned Senior Counsel for the petitioner as under :

Date of Search and Seizure	Date of issuance of Show Cause Notice with corresponding Nos.		Corresponding C.C.Nos.to the Show Cause Notice and Dates of complaints preferred before the Economic Offences Court, Chennai.	
12/07/1995	F.No.T-4 26-D/95 (SCN-XV)	20.08.1996	C.C.No.163 of 1996	14.10.1996
	F.No.T-4 26-D/95(SCN-XX)	16.01.1997	C.C.No.17 of 1997	29.01.1997
	F.No.T-4 26-D/95(SCN-XI)	17.02.1997	C.C.No.44 of 1998	27.03.1998
	F.No.T-4 168/ SZ/CITY/96	4/12/96	C.C.No.45 of 1998	27.03.1998
	F.No.T-4 26-D/95 (SCN-XXIX)	21.01.1999	C.C.No.411 of 2002	28.05.2002
	F.No.T-4 26-D/95 (SCN-XXXII)	5/4/02	C.C.No.459 of 2002	30.05.2002

11. From the above, it is seen that the first show cause notice from the respondents, during the course of adjudication, emanated only on 20.08.1996 in F.No.T-4 26-D/95 (SCN-XV) and, with regard to other matters, the show cause notices were issued afterwards in the years 1997,1999 and 2002. Further, the dates of the complaints lodged by the respondents are also after the lapse of statutory period, provided under Section 41.

12. As per Section 41 of the Act, adjudication proceedings should have been initiated within six months from the date of seizure and the respondents are not empowered to retain the passport of the petitioner beyond the said period. Even though the proviso to Section 41 proceeds to the effect that for the reasons to be recorded in writing, the period of six months, prescribed in Section 41, may be extended by the Director of Enforcement for a period not exceeding six months, the respondents have not shown that there was any such order from the said authority. In addition, the adjudication proceedings, in this case, were initiated after a lapse of 13 months. Hence, the retention of passport by the respondents is not legally sustainable. Since the mandate in Section 41 and the proviso have not been followed by the respondents, they are bound to return back the passport to the petitioner.

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13. For the foregoing reasons, this petition is allowed, directing the respondents to return back the passport bearing No.M-155984 to the petitioner, within a period of two weeks from the date of receipt of a copy of this order.

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Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. The Chief Enforcement Officer,
Enforcement Directorte,
No.26,Haddows Road,
shastri Bhawan ,Chennai6.

2. The Assistant Director,
Enfrecement Directorte,
Shastri Bhawan III Floor,III Block,
No.26 Haddows Road,
Chennai.6

+ 1 cc to R.Syed Mustafa Advocate SR.NO.58399

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